

## **RESPONSES TO COMMENTS ON THE MOBILE FOOD UNIT (MFU) ORDINANCE**

**February 15, 2016**

The City has received numerous comments about the proposed Mobile Food Unit ordinance. Comments were submitted by neighborhood organizations, MFU owners, individuals, and businesses owners who rely on MFUs to complement their business. The City has considered all of these comments and has arrived at a final proposed ordinance that attempts to balance all of the concerns raised. This document covers the major topics that were identified during the comment period and discusses the City's response to the comments. Minor changes are not covered in this document, but can be identified on the marked version of the proposed ordinance.

### **Issue 1: Operation in or nearby to Certain Zoning Districts**

Much of the discussion and debate during the comment period revolved around zoning concerns. The pilot program allowed MFUs to operate in commercial and form code districts. The proposed ordinance allows MFUs to operate in more districts, with certain restrictions: Commercial, Industrial, Office, Open Space, Form Based Code, and Residential Districts. The expansion of the zoning districts gives MFU Vendors flexibility in reaching customers, but the expansion includes limitations to minimize impacts in those areas where residents could be affected. MFUs are prohibited from operating closer than 100 feet from the boundary of any property that is zoned residential. This setback exceeds the largest setbacks required in the zoning code. Although this setback is not as large as the minimum distance imposed around special events, special events merit a larger setback due to the density of the urban setting in which special events typically occur and due to the needs of first responders to emergencies. In addition to the blanket distance restriction, various time restrictions apply as noted below. These restrictions may be waived with the written consent of all property owners within 200 feet of the location of the MFU's operation.

#### ***Commercial, Industrial, and Form Code Districts***

##### ***(C-1 through C-6, SC-1, SC-2, SC-3, PC-1, PC-2, TC-1, I-1 through I-4, SW, CU)***

Commercial, Industrial, and Form Code Districts offer the most flexibility for MFU Vendors. In these districts, MFUs are prohibited from operating from 2AM to 7AM. The distance restriction prohibiting MFUs from operating within 100 feet of the boundary of a residentially zoned property still applies.

#### ***Open Space Districts***

##### ***(OS-1, OS-2)***

Although most parcels zoned Open Space (OS) within the City are public parks owned by the City, some of these properties are owned by other governmental entities (e.g. Knox County, the State of Tennessee, TVA) or privately owned. Examples of privately-owned property that is

zoned OS include Cherokee Country Club; Holston Hills Country Club; Beaver Brook Country Club; the Fountain City Ball Fields; Fountain City Park and Lake; Gettysvue Polo, Golf & Country Club; and Lighthouse Knoxville Event Center.

For properties zoned OS that are not owned by the City of Knoxville, permission will need to be obtained from the owner before a MFU can operate. MFUs on property not owned by the City of Knoxville are prohibited from operating between 11PM to 7AM.

The City wants to give Mobile Food Units the opportunity to provide food services to customers in selected City parks. The City believes that properly permitted MFUs can enhance park users' experience and can also help to provide access to fresh food in food deserts. Thus, the City of Knoxville has identified specific City parks in which MFUs can operate and the City has proposed rules for MFU operation in City parks. These rules include hours of operation, a reservation system, and designated spaces within the parks. The 100 feet distance restriction from residential properties is applicable on all property zoned OS, regardless of whether the property is a City park or owned by another entity.

### ***Office Districts***

#### ***(O-1, O-2, O-3, BP-1)***

A query and report generated by MPC showed that there are 2,003 parcels or portions of parcels zoned office. Of those parcels, only 16%, or 324 parcels, are 2 acres or larger according to the KGIS standard map. After controlling for and excluding certain office property, such as the University of Tennessee campus and large, vacant tracts, the number of representative parcels is 1,070. Twenty percent (20%) of those, or 217 parcels, are 2 acres or larger. The City has proposed to allow MFUs on parcels zoned Office (O) that are 2 acres or larger. As an example, the smallest, developed 2 acre parcel is 2.02 acres and known as the Blue Cross Blue Shield building located at [6305 Kingston Pike](#). This parcel is situated among other properties zoned O-1, C-3, and C-6. The largest single parcel zoned office in Knoxville is the Webb School. Although the entire Webb School parcel is approximately 100 acres, about 80 acres are zoned office.

An example of a developed 3-acre parcel is within [Onyx Point](#), an office development located at 2351 East Walker Springs Lane, a road that intersects with Gallagher View Drive. This development, which is zoned O-1, houses numerous businesses, such as Wells Fargo Advisors, Staffing Solutions, and First State Bank. The development is composed of three parcels ranging in size from 2.98 to 3.24 acres. This development is abutted by a Planned Residential apartment complex on the north and east, and by agriculturally and commercially zoned property south and west. This development provides an excellent example of the need for limitations on MFUs operating on office parcels nearby to neighborhoods.

Another example that demonstrates the need for these limitations is the Helen Ross McNabb facility located at [5310 Ball Camp Pike](#). The primary building is situated on a parcel that is over 5 acres. The parking lot for the facility is located in the rear and the parking lot spans to a point that is approximately 25 feet from the boundary of the closest residential property. A minimum distance requirement and limited hours of operation would limit potential impacts on the adjacent residential property, while also allowing MFUs to serve the employees and other users of the Helen Ross McNabb facility.

On all Office zoned property where MFUs are allowed to operate, the 100 feet minimum distance from residential property applies. Additionally, MFUs are prohibited from operating on parcels zoned Office from 7PM to 7AM. Furthermore, any MFU operating on Office property is limited to only serving the employees or clients of the entity that has hired or solicited the MFU. These restrictions give MFU Vendors a chance to cater to office employees and clients, but these limitations—especially limiting operations to larger Office parcels—insulate neighborhoods from potential impacts.

### ***Residential Districts***

#### ***(R-1, R-1A, R-1E, EN-1 & 2, R-2, R-3, RP-1, RP-2, RP-3, TND-1)***

The proposed ordinance allows MFUs to operate within Residential Districts only as part of a special event that is sponsored or hosted by a neighborhood association, by a homeowners' association, a non-profit organization, or by the City of Knoxville or another governmental entity (such as the Knox County Health Department or the Transportation Planning Organization). Although these terms do not have any uniform definition, for the purposes of the ordinance, a neighborhood association is any group registered with the City's [Office of Neighborhoods](#) and a homeowners' association is any non-profit corporation existing under the laws of the State of Tennessee, including, but not limited to, the Horizontal Property Act and the Tennessee Condominium Act of 2008. A non-profit organization means a charitable organization that has a tax exempt 501(c)(3) status as determined by the Internal Revenue Service. The City wants to afford neighborhood groups the opportunity to have MFUs at special events organized by the community. Entities other than those listed above are not allowed to have MFUs operate on residentially zoned property. In residential districts, MFUs may cater a single, private event, such as a wedding or other celebration; however, in this instance, the MFU shall not operate from or in the right of way, nor shall the MFU solicit passersby.

### **Issue 2: Maximum Number of Units Per Parcel**

During the comment period, we heard concerns about sight distance and setbacks. For the most part, this issue is addressed by encouraging MFUs to use striped parking spaces. Per the zoning code, parking spaces are situated on lots in a manner to alleviate sight distance problems; thus, if MFUs use these for operations, there should not be sight issues. Moreover, if a MFU opts to park outside of the striped

parking spaces, a Site Permit is required to allow zoning and engineering staff to review the appropriateness of the MFU siting.

Additionally, concerns were raised about required parking and traffic congestion. To date and during the Pilot Program, the City of Knoxville has not received any complaints about these issues. Nonetheless, the City has introduced a maximum limit for MFUs based on the size of the parcel. These maximums can be waived in certain instances, to allow for special events. This waiver could also allow for a [food truck park](#), an idea for which support was expressed during the comment period.

### **Issue 3: Meat Smokers**

There has been opposition to allowing food preparation outside of MFUs. This opposition has been framed in two ways—concern about smokers as a nuisance and concern about the safety of having an unprotected smoker in a crowded area. Concerns about smoke from barbecue have been raised across the country, with the most contentious debate occurring in [Austin, Texas](#). Austin was unsuccessful in passing a citywide ordinance to regulate barbecue smoke. Barbecue bans have been successful in [Laguna Woods, CA](#), temporarily in parks in [Costa Mesa, CA](#) and [Santa Barbara, CA](#), and on combustible patios [across California](#). For the most part, these bans were prompted by fire safety concerns during dry seasons. One of the few places that has taken aim at barbecue for air quality purposes is [Beijing, China](#).

Undoubtedly, meat smoking creates particulate in the air. However, [research](#) has shown that particulate matter from meat cooking operations and wood combustion (i.e., burning) is significantly less than that created by gasoline vehicles, diesel vehicles, and road dust. Knox County, through its Air Quality Management Division, has been delegated authority by the EPA to achieve and maintain the National Ambient Air Quality Standards. Both Knox County and the State of Tennessee exempt cooking operations from regulation. Knox County manages smoke using odor regulations and fugitive emission standards. Due to minimal impacts of meat smoking in comparison to other sources of pollution and due to the exemptions provided for cooking operations by Knox County and the State of Tennessee, the City posits that it would be unfair to ban mobile barbecue smokers as part of the MFU ordinance on the premise of air quality or nuisance concerns.

In order to address safety concerns, the City surveyed the operation of currently permitted MFUs that offer barbecue, of which there are three. One of these Units smokes its meat off-site, while the other two employ different methods. One of the MFUs also smokes its meat off-site, but uses a steam smoker to warm the meat using water vapors; on this Unit, heat escapes through a tailpipe located eight feet above the ground. The other MFU uses a barrel smoker, also known as a stick burner. In order to address safety concerns regarding heat that may be generated by these smokers, the City has imposed a series of requirements that includes marking the smoker and placing traffic safety cones around the smoker. Additionally, at any City approved special event, the smoker must be enclosed with a non-combustible fence.

#### **Issue 4: Identifying the Operator for Private Property**

In several places of the proposed ordinance, the term operator is used to refer to an individual or entity with an ownership or other interest in private property. For clarification and to avoid potential conflicts, this term has been defined to mean either (1) the property owner or tenant where there is one occupant of the parcel, or (2) the property owner where there are multiple occupants or tenants on a parcel. This allows the owners of property, such as shopping centers with multiple tenants, to have the final decision on whether to allow MFUs. However, if the only occupant of a property is a lessee, it is appropriate to allow the tenant to authorize or solicit MFUs.

#### **Issue 5: Enforcement & Penalty for Operating without a Permit**

Questions have been raised about how the City will handle enforcement of the MFU ordinance. Like many of the City's ordinances, enforcement of the MFU ordinance will be complaint driven. Due to the mobile nature of MFUs, it is not feasible for the City to know the location of all permitted MFUs at all times. The rules and regulations that apply to MFUS, however, are comprehensive and provide MFU Vendors and the community with clear expectations on how MFUs will operate.

Enforcement authority for the MFU ordinance will fall on multiple City departments—namely the Plans Review and Inspections Department and the Knoxville Police Department. During regular business hours, complaints regarding MFUs will be fielded by the Plans Review staff, who will investigate in the field as necessary. After business hours, KPD officers can provide cursory investigations, primarily to determine whether a MFU has a permit. KPD officers will not be able to investigate more specific complaints, but the officers will refer those to the appropriate authority within the City of Knoxville. For example, a KPD officer can advise a MFU that it cannot amplify sound, but an officer likely would not enforce provisions of the MFU ordinance related to signage or stormwater regulations. The penalty for operating without a Unit or Temporary Permit shall be \$50 per occurrence.

#### **Issue 6: Additional Structures**

There was some concern about allowing MFU Vendors to set up tables and chairs for customers on private property. Additional structures are not permitted on City owned property or right-of-way. Language has been added to require Vendors to remove any of these temporary structures when they are done operating for the day.

#### **Issue 7: Temporary Becoming Permanent**

Mobile Food Units, by their nature, are mobile. Many of the MFUs that have been permitted under the pilot program seek customers in a variety of contexts—in downtown Zones, at special events, and on private property where there is an already established customer base, such as mountain biking groups at l jams and at various bars and brewpubs across the City. Nonetheless, comments were made about MFU becoming permanent at specific locations. Although it is unlikely that permitted MFUs will operate in this manner, the City has added language to the proposed ordinance that requires MFUs to leave private property on which it has operated at the close of business. While MFUs are not operating, the

Unit necessarily must be stored on private property. Nothing in the ordinance prohibits the parking of a MFU overnight on private property, such as the location of a commissary or at a Vendor's residence.